SELDON H. KLINKE

IBLA 72-369 Decided August 18, 1972

Recommended decision on remand by Robert W. Mesch, Departmental hearing examiner, to reject an application to purchase a trade and manufacturing site in its entirety.

Adopted as modified, application rejected.

Alaska: Trade and Manufacturing Sites

An application to purchase land embraced in a trade and manufacturing site must be based upon occupancy and use of land as the site of some commercial enterprise, and cannot be based upon the use of the land in connection with a business the objective of which is the sale or other disposition of the land itself.

APPEARANCES: Grace E. Clement, pro se; James R. Mothershead, Assistant Regional Solicitor, Anchorage Region, United States Department of the Interior.

OPINION BY MRS. THOMPSON

Departmental decision, Seldon H. Klinke, A-31017 (February 12, 1970), set aside a decision of the Office of Appeals and Hearings, Bureau of Land Management, in part, and remanded the case for a hearing to determine whether the applicant's use of land included in an application to purchase a trade and manufacturing site complied with the requirements of the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970). Pursuant to that decision a hearing has been held and the hearing examiner has submitted a recommended decision to reject the application to purchase.

The legal and factual background of this case is extensively discussed in the hearing examiner's decision. 1/ The decision dis!

1/ He did not resolve, nor do we need resolve, the question of whether Grace Clement, Klinke's former wife, could pursue Klinke's application in his or her own behalf.

cusses in detail the evidence relating to the improvement and utilization of the portion of the trade and manufacturing site in question. With respect to every transaction affecting the use of the land within the site except possibly one, the examiner concluded that the land was used "as the stock in trade of a business operation," rather than for purposes of trade, manufacture or other productive industry within the meaning of the trade and manufacturing site statute.

The examiner correctly applied the facts to the legal standards set forth in the original Departmental decision in this case. We adhere to the view expressed therein that an application to purchase a trade and manufacturing site must be based upon occupancy and use of land as the site of some commercial enterprise, and not upon the use of the land, alone, as the stock in trade for sale or other disposition.

As to the possible exception, a tract 115 feet by 200 feet, referred to by the examiner as the "Guard property," we clarify the basis for our adoption of the examiner's decision. He stated that the use of this land "could, if everything else was proper, constitute the occupancy of the land for the purposes of trade, manufacture, or other productive industry. * * *" He did not specifically discuss his qualification, but he did hold that the use of the tract was an insufficient qualifying use to authorize the issuance of a patent for that isolated tract. Generally, however, the examiner found Grace Clement's testimony was not credible because other evidence with respect to other parcels within the tract was found to have more support and was, therefore, given more weight. The evidence with respect to the other parcels casts considerable doubt as to whether her purported rental of the Guard tract was anything more than a mere incident in her and Mr. Klinke's over-all apparent effort to sell the land, with title to be conveyed to the purchasers when title was acquired from the United States. We find that there is insufficient evidence to support a conclusion that this "Guard property," any more than the rest of the site, has been held in good faith for the purposes of trade, manufacture, or other productive use, as required by the law, 43 U.S.C. § 687a (1970). A person seeking public lands, or interests therein has the burden of establishing his right thereto. Lance H. Minnis, 6 IBLA 94 (1972); cf. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the hearing examiner's decision is adopted, as clarified above, and is attached hereto as submitted to the Board, and the application to purchase the trade and manufacturing site is rejected in its entirety.

Joan B. Thompson
Member

We concur:

Martin Ritvo
Member

Frederick Fishman
Member

RECOMMENDED DECISION

SELDON H. KLINKE	:	FAIRBANKS 028081
	:	
	:	Application for trade and
	:	manufacturing site.

Preface

On July 6, 1966, Seldon H. Klinke filed an application for the purchase of a trade and manufacturing site pursuant to section 10 of the act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970). The application covered 79.76 acres of land described as Lot 2 and the SW 1/4 NE 1/4 of Section 36, Township 6 South, Range 8 West, Fairbanks Meridian. The application stated that the land was used for "Trailer Court and Lot Rentals".

By a decision dated February 8, 1968, the Fairbanks District and Land Office, Bureau of Land Management, rejected the application as to all land applied for except 25 acres. Five acres were rejected (the SE 1/4 SW 1/4 SW 1/4 NE 1/4 and the SW 1/4 SE 1/4 SW 1/4 NE 1/4) because they were included in a prior application filed by another individual. The decision concluded that the applicant had forfeited any right he might have had to the lands

in conflict because of the unsuccessful prosecution of an adverse claim in the state court. The decision rejected 39.76 acres (the W 1/2 W 1/2 SW 1/4 NE 1/4 and Lot 2) because the applicant failed to show that the land was "actually used and occupied as a necessary part of a bona fide trade, manufacture or other productive industry". The decision approved the application for 25 acres (the NE 1/4 SW 1/4 NE 1/4, the E 1/2 NW 1/4 SW 1/4 NE 1/4, the NE 1/4 SW 1/4 SW 1/4 NE 1/4, the N 1/2 SE 1/4 SW 1/4 NE 1/4, and the SE 1/4 SE 1/4 SW 1/4 NE 1/4) because a "report of examination of the land by a Bureau of Land Management representative confirms the fact that the applicant is engaged in the business claimed". The applicant appealed the decision to the Director, Bureau of Land Management.

In a decision dated May 15, 1968, the Office of Appeals and Hearings, Bureau of Land Management, rejected the application in its entirety. This decision concluded that the applicant had forfeited any claim or right he might have had to the five acres covered by the prior application filed by another individual. With respect to 39.76 acres which had been rejected by the Land Office, the decision held that the applicant had not presented any convincing evidence of the use of this land in connection with the alleged trade or business being conducted on the other land in the purchase application. The decision rejected the 25 acres approved by the Land Office on the grounds that "[i]t is evident that Mr. Klinke has merely laid claim to the site, performed minimal clearing and roadbuilding, constructed one building and set himself up in "the land renting business," using Federal public land as his stock-in-trade". The applicant appealed this decision to the Secretary of the Interior.

By a decision dated February 12, 1970, (A-31017) the Assistant Solicitor, Land Appeals, affirmed the decision of the Office of Appeals and Hearings insofar as it rejected the application as to 24.76 acres, set the decision aside insofar as it rejected the application as to the remaining lands, and remanded the case to the Bureau of Land Management "for further action consistent with this decision". This decision concluded that the application was properly rejected as to the five acres covered by the prior conflicting application. The decision also held that 19.76 acres (the W 1/2 W 1/2 SW 1/4 NE 1/4 and approximately one-fourth of Lot 2 described as the E 1/2 E 1/2 SE 1/4 NE 1/4) were properly rejected because there was no evidence of qualifying use of the land as a trade and manufacturing site. With respect to the remaining 55 acres (the NE 1/4 SW 1/4 NE 1/4, the N 1/2 SE 1/4 SW 1/4 NE 1/4, the SE 1/4 SE 1/4 SW 1/4 NE 1/4, the E 1/2 NW 1/4 SW 1/4 NE 1/4, the NE 1/4 SW 1/4 SW 1/4 NE 1/4, and approximately three-fourths of Lot 2 described as the W 1/2 SE 1/4 NE 1/4, and the W 1/2 E 1/2 SE 1/4 NE 1/4) the decision stated:

> Whether any part of appellant's use of the land in his entry constitutes qualifying occupancy and, if so, what part of the land has been used in the manner contemplated by the law are questions which cannot be answered from the present record. In view of the uncertainties already pointed out, as well as others, and the erroneous bases upon which the decisions below rested, we believe that appellant's rights can be properly determined only after another examination of his entry and careful evaluation of the evidence of his compliance with the requirements of the law in the light of the criteria which have been discussed here. It should be determined just what improvements appellant has made and just what he has been renting in the way of improvements as well as land. In the event of conflicting testimony with respect to material facts, a hearing should be directed in order that all pertinent evidence relating to such facts may be brought before the Department.

The applicant did not seek review of the final decision of the Department.

At the request of the Bureau of Land Management, a hearing was scheduled and held on August 31, 1971, at Nenana, Alaska, and on September 1, 1971, at Fairbanks, Alaska. The Bureau of Land Management was represented at the hearing by the Regional Solicitor's Office, Department of the Interior, Anchorage, Alaska. The applicant, Seldon H. Klinke, did not appear and was not represented at the hearing. Pursuant to requests made by the former wife of the applicant, Grace E. Clement, who appears to have been the principal if not the sole participant in the filing of the application and the appeals within the Department, a further hearing was scheduled and held on September 13, 1971, at Seattle, Washington. 1/

The Bureau of Land Management was represented at this hearing by the Regional Solicitor's Office, Anchorage, Alaska. The only other party that appeared was Grace E. Clement. She appeared without counsel. After the Seattle hearing, depositions were taken by the Regional Solicitor's Office on October 15, 1971, at Nenana, Alaska, and Clear Air Force Base, Alaska, and on October 16, 1971, at Fairbanks, Alaska. The depositions

1/ Seldon H. Klinke left the trade and manufacturing site on December 30, 1964, and did not return (S-Tr. 98). In a divorce decree entered on November 3, 1965, the Superior Court for the State of Alaska, Fourth Judicial District, awarded the trade and manufacturing site to Grace C. Klinke and restored her maiden name of Grace E. Clement (Ex. 57). By a quitclaim deed dated January 7, 1966, the applicant conveyed the trade and manufacturing site to Grace Clement (Ex. 61). Grace E. Clement allegedly agreed during 1965 to convey a designated portion of the trade and manufacturing site to Seldon H. Klinke when a patent is issued (S-Tr. 68, Ex. 78).

were taken pursuant to notice before a notary public. Neither the applicant nor Grace E. Clement appeared, or was represented, at the taking of the depositions. 2/

The 1970 decision of the Assistant Solicitor, Land Appeals, discussed the following criteria that should be considered in determining whether the applicant complied with the requirements of the law:

> The question awaiting determination here is whether appellant has occupied the subject land as the site of a business operation or has, as the Office of Appeals and Hearings found, used it as the stock in trade of a business operation.
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> . . . appellant claims to have spent $29,400 in improvement of the land embraced in his trade and manufacturing site. A portion of that sum was spent in the construction of one rental unit, while the balance was allegedly spent in the clearing of construction sites and the building of roads and in the development of wells, septic tanks, etc., for the purpose of renting or leasing such facilities to people who would occupy the land. Conceivably, the rental of those facilities and the land required to accommodate their use could constitute the occupancy of land "for the purposes of trade, manufacture, or other productive industry". On the other hand, the rental of building lots, unimproved except for clearing and the construction of access roads, cannot.
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> . . . there is a distinct difference between occupancy of land in connection with the operation of a commercial enterprise and the sale, or other disposition, of land as a

2/ References to the August 31 and September 1 transcript will be (F-Tr. ___); references to the September 13 transcript will be (S-Tr. ___); and references to the transcript of the depositions will be (D-Tr. ___).

> a business in itself. Although the sale and management of real property constitute "trade" within the meaning of the statute, it is obvious, we believe, that Congress did not contemplate the establishment of a private business by an individual through the individual's acting as agent for the Government in the disposition of public land. Thus, occupancy of a tract of land as the site of a real estate office may be a legitimate use of the land as a trade and manufacturing site, but the sale, or the lease or rental, of the land itself is not qualifying use.
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> * * *
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> There are, of course, some commercial enterprises in which the rental of land is an integral part of the business being conducted on that land. One who rents cabins, for example, rents the land occupied by the cabins, as well as the cabins themselves. However, the land remains the site of a business the essence of which is the rental of the facilities which have been placed upon the land. On the other hand, the developer who subdivides a tract of land into building lots and who improves the land by putting in streets, as well as water, sewage and electric power facilities, in order to enhance the value of the lots for sale is not occupying the land which he proposes to sell as a trade and manufacturing site.

This decision will consider separately the various arrangements, or agreements, that Seldon H. Klinke and/or Grace E. Clement had with the different individuals that resided (or allegedly resided) within the limits of the 55 acres remaining within the trade and manufacturing site.

EASTLAND

On March 1, 1962, Seldon H. Klinke and Grace C. Klinke entered into a written agreement with Mr. and Mrs. John W. Eastland (Ex. 17). The document is entitled "Rental With Option Contract". The agreement covers the rental "with option" of approximately one-half acre of land described as lots 13 and 14. The agreement provides that the Eastlands will pay a

lot preparation fee of $100 prior to moving onto the lots; that the rental will be $10 per month (or the equivalent); that the "Renter [Eastland] will install, (if he so desires and for his own use) such items as: septic tank, cesspool, well, water and sewage lines, and furnish the material needed for these items"; that "he will maintain and service these" items for his own use; and that at "no time will the Rentiers [the Klinkes] be responsible for the maintenance of any roads, driveways, septic tanks, cesspools, wells, or any lines leading to or from such items, or for any electrical hook-ups desired by the Renter". The agreement further provides that:

> At the time the Rentiers acquire title to the above described T. & M. Site, (which will not be later than July 11, 1966) the Renters will be offered a clear title to the above described lots. At this time the Renter may, but is not obligated to do so, purchase the two lots together, as a unit for a fixed price of $350.00 per lot. All rent money paid, including the $100.00 lot preparation fee, will be subtracted from the total amount of the two lots and the Renter will pay only the balance.

On October 9, 1964, Seldon H. Klinke executed a document (Ex. 18) that reads in part:

> This is to certify that full payment in the amount of Seven Hundred Dollars ($700.00) has been received from John W. Eastland for lots # 13 and # 14, in accordance with my personal map of my Trade & Manufacturing Site . . .
>
> Clear title will be released to Mr. John W. Eastland without any further payment or action on Mr. Eastland's part, no later than July 11, 1966.

On January 6, 1969, Grace Clement executed a similar certification acknowledging payment in full by Eastland for lots 13 and 14 (Ex. 19). This certification states in part:

> . . . This above description is somewhat enlarged over the last description, but this is to be the legal boundary lines . . .
>
> Clear title will be released to Mr. John W. Eastland without any further payment or action on Mr. Eastland's part, immediately upon title release to me.

John W. Eastland testified that he has resided on the property "for eight years, maybe more" (F-Tr. 96); that he placed a trailer, a "wanigan" (which is a structure that is built and attached to a trailer to provide additional living area), a garage and a little A-frame house on the property at his own expense (F-Tr. 97, 105); that he cleared the land, constructed an access road or driveway into the property, and installed sewage and water systems at his own expense (F-Tr. 100, 106, 108); that as far as he was concerned he had a binding agreement with Klinke before he moved on the land to purchase the property, and in fact he did purchase it (F-Tr. 101, D-Tr. 91, 92); that it was not his understanding that he simply had the first right to purchase the property in the event Klinke might decide to sell at some later date (D-Tr. 91, 92); that he paid $350 each for the two lots, and then another $100 for a little more land on the north of his lots (F-Tr. 101); and that the receipt executed by Clement in 1969 represented full payment "for that little piece of land adjoining my land" (F-Tr. 103).

Grace E. Clement testified that they did not sell any of the land to any of the occupants, and they did not give anyone an unrestricted option to purchase any of the land (S-Tr. 15, 16); that they did tell Eastland and some of the others that they could always live on the land by one renewed lease after another, and if they ever decided to sell the land "you will have first opportunity to buy it, and we will set the figure right now" (S-Tr. 15, 16); that she gave a notarized receipt to Eastland and some of the others (i.e. the Jameses, the Smiths, the Veys and the Beckers) acknowledging that they had paid for the land and were entitled to the land because she had a bad sick spell and she wanted to make certain that they would get the land if anything happened to her (S-Tr. 143); that irrespective of the notarized receipt, Eastland and the others were still obligated to pay rent (S-Tr. 148); that she was not aware that Klinke had executed a certificate in 1964 acknowledging full payment for the land by Eastland (S-Tr. 157, 158); that Klinke paid Eastland $450 for material and labor for the well, water and sewer lines, and cesspool that Eastland had installed on the land (S-Tr. 39, 41, 122, Ex. A); and that they were simply renting the land and the improvements to Eastland and the others as in any other trailer court operation (S-Tr. 132, 133).

The testimony presented by Grace Clement cannot logically be reconciled with the plain wording of the documents noted above. The testimony is also inconsistent with prior statements made by Grace Clement in various written instruments.

In a letter dated January 15, 1968, to one of the occupants of the trade and manufacturing site (Ex. 39), Grace Clement stated:

> . . . It may be difficult for you to understand, but we made several different types of Contracts. We have "tentative sales" on some (AFTER WE GET TITLE), We have "payment plan" on some (title to be offered when we get it) and we have a straight rental plan on some. We planned from the very first that we could only afford to promise "option to purchase" rights on a small amount of the road frontage, so like most things, first come, first served. When we had people living on as much of the property as we felt we could let go of, we quit the "option to purchase" and had planned to reserve the balance of the road frontage strictly for rentals, and at no time did we plan to do otherwise, while Klinke was there. Only some time after he had gone, did I say that I might let some more road frontage go.

After receiving the Land Office decision dated February 8, 1968, Grace Clement sent a form letter to each family residing on the trade and manufacturing site requesting that they cast a vote for or against accepting the decision of the Land Office (S-Tr. 41-43, Ex. 15). The form letter reads:

> I just yesterday received the papers to get Title to the land. BUT with reservations. I will not reveal to anyone, the exact reservations. I will tell all of you this: There are two places that are "cut out" of the entire parcel of land. I have a right to put up a fight for these two places and have them included in the entire parcel, which would mean quite a delay in being offered Title again, or I can accept the Bureau of Land Management's offer, as is . . .
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> * * *
>
> . . . How far do you think you can cut my income and still expect me to come back up there and face your snubs, gossip, insults & ridicule, just to fight for that parcel of land that I, when everything is all settled, will get LESS out of the entire parcel of land than anyone of your places are worth.

* * *

> There are some other entrymen in the area, who have sold land & been paid for it. They have not given Title to the purchasers, because they don't have title, yet. I wonder how much they get hounded and blamed for not being able to move the Govt. red tape.
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> * * *
>
> . . . Vote just as you wish, but do vote. Any family that is not interested enough in their property to take an active part in deciding the future of it, cannot be considered when the time does come to pass out Titles.
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> * * *
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> . . . I can gain Title to all the T.&M. Site, except two places, without much further delay, just paper processing and signing. Then all but two families would get their Titles within a short time and I, in turn, would get certain money due me at that time.

I conclude that the land occupied by Eastland was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department. The evidence establishes that the Eastland lots were used "as the stock in trade of a business operation".

SMITH

Grace E. Clement testified that the arrangements with the Smiths were essentially the same as those with the Eastlands (S-Tr. 81, 82, 108, 143-155); that the Smiths occupied the land and used the improvements under a rental agreement (S-Tr. 82, Ex. 70); and that they (the Klinkes) put the improvements in, such as the driveway, the sewage system and the water

system (S-Tr. 82-86, 113). She produced a document allegedly executed on May 16, 1962, by the Klinkes and the Smiths covering the rental by the Smiths of lots 25 and 26 within the trade and manufacturing site (Ex. 70). The document confirms Grace Clement's testimony that the occupancy of the lands by the Smiths was strictly on a rental basis.

Lillian P. Smith testified that they never signed any sort of rental agreement for the land, and that the signatures on the document produced by Grace Clement are not the signatures of herself or her husband (D-Tr. 142-144). It seems obvious from Mrs. Smith's signature (Ex. 90) and from other notarized signatures of the Smiths in evidence (Exs. 40, 41, 49) that someone other than the Smiths signed their names on the rental contract produced by Grace Clement.

Lillian P. Smith testified that they moved to the land in April of 1963 (F-Tr. 193); that at that time they had a firm commitment with the Klinkes to purchase the land (F-Tr. 194, D-Tr. 150, 151); that they moved a trailer house onto the land, installed their own water and sewage systems, constructed a "wanigan", a greenhouse and a shed, and landscaped the whole thing (F-Tr. 199, 210, 214, D-Tr. 140, 141, 145); that they lived on the property until 1968, when they sold the land and all of the improvements to another party (F-Tr. 196-198); and that the other party is presently living on the land (F-Tr. 197, 199).

On October 4, 1968, Grace Clement executed a notarized receipt certifying that full payment had been made by the Smiths for lots 25 and 26, in their enlarged form (Ex. 44). The document also stated that clear

title would be released to the Smiths without any further action or payment on their part, "immediately upon title release to me".

On November 9, 1968, the Smiths entered into a contract with a third party relating to the sale of the two lots, with all improvements, for the sum of $12,000 (Ex. 49). The contract recognized that the Smiths did not as yet have title to the property.

By a quitclaim deed executed November 12, 1968, Grace Clement conveyed all interest that she might have in the two lots to the Smiths (Ex. 45). In April 1971, the Smiths had a survey made of the two lots at a cost of $700 (Exs. 46, 47). On May 11, 1971, Grace Clement executed a new quitclaim deed in favor of the Smiths describing the two lots in accordance with the surveyed description (Ex. 48).

In view of the documentary evidence, I cannot accept the testimony of Grace Clement that the Smiths occupied the land on a rental basis. I conclude that the land occupied by the Smiths was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department.

VEY

Grace E. Clement testified that the arrangements with the Veys were essentially the same as those with the Eastlands and the Smiths (S-Tr. 108, 143-155, 162-166); that the Veys occupied the land and are still occupying the land under a rental agreement (S-Tr. 104); and that they (the Klinkes) did all of the necessary clearing work, put in the access road or driveway, and installed the water and sewage systems (S-Tr. 108).

She produced a document allegedly executed on September 20, 1962, by the Klinkes and George Vey covering the rental by the Veys of lots 19 and 20 within the trade and manufacturing site (Ex. 71). Again this document confirms Grace Clement's testimony that the occupancy of the land by the Veys was on a rental basis.

George Vey testified that he never signed a rental contract, or any other agreement, relating to the land (D-Tr. 132, 133); that when he moved on the land in the spring of 1963, he had a verbal agreement with Klinke to purchase two lots for $350 each (F-Tr. 156, 157, 161); that Clement recognized in writing the purchase agreement that he had with Klinke (D-Tr. 133); that he bore all of the expenses of constructing the access road or driveway, and installing the water and sewage systems (F-Tr. 154-156, 163); and that he originally moved onto the lots with a trailer, and then later he constructed a house and a garage on the lots (F-Tr. 152, 156).

On January 6, 1969, Grace Clement executed a document that reads:

> Mr. and Mrs. Vey have occupied the above lots for several years and are entitled to purchase rights over and above any other person or persons, no matter what price or reason might be offered.
>
> The purchase agreement price has been set for some time and was set at $700.00 for 1/2 acre . . .
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> * * *
>
> It is understood that Mr. and Mrs. George Vey have paid S. H. Klinke in the amount of $100.00 and have paid Grace Clement $200.00 toward the purchase price of this property.

> Title to this property will be offered Mr. and Mrs. Vey immediately upon my receiving same from the B. L. M.

George Vey presented an excellent appearance as a completely honest and trustworthy witness. In view of his testimony, and the documentary evidence, I cannot accept the assertions of Grace Clement that the Veys occupied and are still occupying the land on a rental basis. I conclude that the land occupied by the Veys was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department.

JAMES

Edith G. James testified that she and her husband moved onto lots 1, 2, 3 and 4 in 1962, with a trailer, and subsequently constructed a log addition (at a cost of $2500.00), and a garage (at a cost of $1000.00) (F-Tr. 47, 49, 50, 57, Ex. 61); that they had a firm verbal agreement with the Klinkes to purchase the land, and it was understood that they would obtain title when Klinke received a patent (F-Tr. 45, 49); that they installed a septic tank and leaching pond, dug a well and provided a pump, and built an access road or driveway, all at their own expense (F-Tr. 50-55); that they made purchase "payments until about '66 . . . when it was finally completed" (F-Tr. 47); and that finally in 1969, they received a sale document pursuant to the original agreement showing full payment for the property (F-Tr. 46-48).

On January 6, 1969, Grace Clement executed a document certifying that full payment in the amount of $1400 had been received from the Jameses

for lots 1, 2, 3 and 4 (Ex. 7). The document also stated that clear title would be released to the Jameses "without any further payment or action on their part, immediately upon title release to me".

The testimony of Grace E. Clement that was covered in connection with the arrangements with Eastlands, Smiths, and Veys, is equally applicable to the arrangements with the Jameses. In addition, Grace Clement testified that the (the Klinkes) dug the hole for the septic tank, purchased and transported the tank to the property, constructed the driveway or access road to the lots, and paid the Jameses $400 for some labor and material that they furnished for the installation of the water system (S-Tr. 87, 100, 111, 112). She further emphasized that the Jameses were occupying the lots on a rental basis the same as the others (S-Tr. 101).

In the appeals from the Land Office decision, Grace Clement submitted a rental contract allegedly signed by Edith James in support of the assertion that the Jameses occupied the land on a rental basis (Ex. 61). The signature of Edith James on the contract does not appear to be the same as the signature of Edith James that appears on other documents in evidence (Ex. 61).

I have no reason to question the testimony of Edith G. James. The evidence establishes that the Jameses occupied the land under a purchase and sale agreement and not on a rental basis as claimed by Grace Clement. I conclude that the land occupied by the Jameses was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department.

On September 1, 1963, George H. Becker and the Klinkes signed a document entitled "RENTAL CONTRACT" (Ex. 20). The contract provides for the rental by Becker of lots 11 and 12, within the trade and manufacturing site, for a period of five years. The contract further provides that:

> The Rentiers [the Klinkes] have, or will be required, to clear an area that is adequate for a dwelling, a yard and parking space. Also to clear a driveway from the Hiway into the dwelling area and to haul and spread gravel on the driveway.
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> The Renter [Becker] will install (if he so desires) any such items as: septic tank, cesspool, well, water and sewage lines, and will furnish the material needed for any such items as he cares to install. These items will be maintained by the Renter as his needs require.
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> At no time, while this Contract is in effect, will the Rentiers be responsible for the maintenance of any wells, septic tanks, cesspools, lines leading to or from any of these items, or any electrical hook-ups, clearing of snow from drive-ways, or any other maintenance.
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> * * *
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> The rental price for the two lots shall be $30.00 per month or the equivalent.
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> At the beginning date of this contract it is understood and agreed that the Renter has paid in money and or the equivalent of, 15 (fifteen) months rent. and should he for any reason, desire to vacate the lots before the expiration of these, 15 (fifteen) months, there will be no refund.

On November 15, 1968, Grace Clement and Seldon H. Klinke signed a document entitled "TENTATIVE SALES CONTRACT" (Ex. 21). This contract

covered the "tentative sale" by Klinke and Clement of lots 11 and 12 to George H. and Mary Becker.

The contract reads in part:

> At the time the Prospective Sellers acquire Title (proof of patent) to the above described T. & M. Site, the Tentative purchasers will be offered clear Title to the herein described two (2) lots. The Tentative Purchasers may, but are not obligated to do so, purchase the two (2) lots as a unit.
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> The above named Tentative Purchasers (and present occupants) of the herein described two (2) lots have occupied said two (2) lots for a period in excess of five (5) years. The above named Tentative Purchasers have, at all times, abided by all parts of the written Contract, paying promptly each and every month. Considering both the written and the verbal parts of the now expired five (5) year Contract, it would be appropriate, at the writing of this Contract, to put all the agreed upon parts in this Contract, for the benefit of all interested persons.
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> * * *
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> Due to the uncertainty of the actual percentage of an acre contained in the above described boundaries, it is agreed that the same rate of charge, per acre, formerly agreed upon, would be proper. All rent money paid will be subtracted from the total amount of price for the two (2) lots, plus the same rate of charge for any over the half-acre, that the survey might cause to become part of the two (2) lots, in their enlarged form. The formerly agreed upon price for the two (2) lots, (half-acre), was $700.00 total.
>
> Should the Bureau of Land Management, for any reason, deny "purchase rights" to Seldon H. Klinke and Grace Clement for the herein described T. & M. Site, it is agreed that before time has expired for "further action", Seldon H. Klinke and Grace Clement will submit a signed relinquishment to the Tentative Purchasers (George and Mary Becker) for the herein described two (2) lots, in their enlarged form, whereby the Tentative Purchasers can file said signed relinquishment in at the Fairbanks Bureau of Land Management Office and simultaneously file a Homesite filing on the land embraced in the enlarged two (2) lots.

George H. Becker testified that he has lived on lots 11 and 12 within the trade and manufacturing site since September of 1963 (F-Tr. 114); that after placing a mobile home on the land he constructed a "wanigan" and a garage (F-Tr. 114); that when he moved on the land there was a little cleared area and a temporary access road, and later he did additional clearing and improved the road (F-Tr. 124); that he received 15 months free rent under the rental contract for putting in the sewer system, lights and water (F-Tr. 114, 115); that after the expiration of 15 months he started paying rent, and paid a total of $1350 (F-Tr. 116); that he and Klinke originally agreed that he could buy the property when Klinke received title, and his monthly payments were supposed to be applied to the purchase price (F-Tr. 116, D-Tr. 63); that he does not know why the rental contract did not include the agreement to purchase (F-Tr. 117); that he asked Klinke about it and Klinke said not to worry because his word was good (F-Tr. 118); that he later became worried because he was not protected, and he approached Grace Clement and obtained the tentative sales contract from her (F-Tr. 119, 120); that this contract reflects his original verbal understanding with Klinke (D-Tr. 67); and that it was always his understanding that he was buying the property, and not that he could buy it if Klinkes ever decided to sell (D-Tr. 62-64).

The testimony of Grace E. Clement that was covered in connection with the arrangements with other occupants is apparently equally applicable to the arrangements with the Beckers. In addition, Grace Clement

testified that they (the Klinkes) installed the sanitary facilities, the water system, and an ample driveway and parking area, all at their own expense, for the Beckers' use in the occupancy of lots 11 and 12 (S-Tr. 45, 121).

I conclude that the land occupied by the Beckers was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department. The evidence establishes that the Beckers occupied the land under a purchase and sale agreement, and not on a rental basis as claimed by Grace Clement.

IRWIN

John D. Irwin testified that he moved on land within the trade and manufacturing site in June of 1962 (F-Tr. 76); that at that time he had a firm verbal agreement with Klinke, that he (Irwin) would get three lots at a purchase price of $600 per lot as soon as Klinke got title to the trade and manufacturing site (F-Tr. 76); that he made a down payment of $50 on the purchase price in May of 1962 (F-Tr. 76); that under the agreement he was to put in all of the improvements, and then Klinke was going to claim them in order to get title to the trade and manufacturing site (F-Tr. 78); that he cleared the land, installed a water system and a sewer system, and constructed two houses, two garages, a chicken house and a greenhouse (F-Tr. 78-83, D-Tr. 108); that after he got the improvements in, he asked Klinke for something in writing, and when he did not get it he started checking into trade and manufacturing sites (D-Tr. 107,

108); that he was told that to protect himself he should file a homesite claim (D-Tr. 107, 108); and that he has claimed the land as his own since February of 1963, when he started making various filings with the land office (Ex. 63).

Grace Clement testified that Irwin moved on the land as a tenant in 1962 (S-Tr. 25); that they kept asking him if he would sign a rental contract and he kept stalling (S-Tr. 25); that all of a sudden he went in and filed a five-acre homesite on the land in February of 1963, and they have been fighting with him ever since (S-Tr. 25, 27); that the $50 paid by Irwin was not a down payment on the purchase price (S-Tr. 180); and that Irwin put in his own water system and everything else -- "they wouldn't let us on the property once they got on there" (S-Tr. 123).

On November 1, 1963, John D. Irwin, as the contestant, instituted a proceeding against Seldon H. Klinke, as the contestee, in which Irwin attacked the validity of the trade and manufacturing site (Ex. 61). The following appears in the answer to the complaint that was filed by Klinke (Ex. 61):

> The Contestee did not offer to sell any portion of the subject land, either on or about the 29th day of May, 1962, or at any other time. The Contestee did enter into an agreement with the Contestant, John D. Irwin, whereupon the Contestant was to rent two lots measuring 115 ft. road frontage on the Clear-Nenana Hiway and measuring 200 ft. East. in their entirety. Rental payment for said lots was: $100.00 lot preparation fee and $10.00 monthly rent. (the full amount of the lot preparation fee was refundable.) It was further agreed, that if and when the Contestee did acquire title to the subject land, and if the Contestant wished to, He would be allowed to purchase the lots. This stipulation was for the protection of the Contestant against

more lucrative prospects wishing to rent the lots. It was an issuance of prior right given to the Contestant but with no obligation to him. The Contestant paid 1/2 of the lot preparation fee in the amount of $50.00. the remaining $50.00 has never been paid nor has any of the rent at any time.

George Vey, whose testimony has been previously noted, testified that:

. . . I was one -- just like Mr. Irwin and Floyd James and Mr. Warren Smith and maybe there's -- I don't know, them's the only ones that I know of that had this purchase agreement . . . (D-Tr. 134)

I conclude that the land occupied by the Irwins was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department. I accept the testimony of Irwin, which is supported by other evidence, that he originally occupied the land under a purchase and sale agreement.

WADDLE

Two letters were introduced in evidence that illustrate Grace Clement's position with respect to the arrangements with Douglas and Terry Waddle. The letters also reflect on the accuracy of the continual assertions made by Grace Clement that all of the occupants of the trade and manufacturing site resided on the land under rental arrangements, and that she or Klinke bore the expense of improving the sites for rental purposes.

In a letter dated January 15, 1968, to the Waddles (Ex. 39), Grace Clement stated:

> Did it occur to you, while you were talking to your Attorney, your neighbors and the land office, to inform them that you are under a written RENTAL agreement? You know as well as I do, that when Klinke first made the deal with you people, it was strictly a rental Contract and a written Contract . . . It was only after Klinke had gone, that you approached me on the buying of that lot and half of the lot next to you. The first time you mentioned it, I told you that I was not going to promise to sell any more of my road frontage, that I wanted to keep some of it for rental property. But, I told you that IF I decided to sell that portion of the land that you would have first choice at it. At a later date, I did tell you that I was pretty sure it would be fore sale WHEN I GOT TITLE. and that you would be the first to know.
>
> There is no definite, written agreement with you as to any sale of that ground . . .
>
> * * *
>
> . . . I notice your "price" is comparable to the "tentative sales" price (when we get title) of $1400.00 per acre. Now these people, who are on the "tentative sales plan" built there own driveways. Do you remember who built yours and have any idea how many men and truck and "cat" hours went into that driveway? and then I'm to turn it over to you at the same price (even if there was a tentative sales agreement in your contract) as those "first come" people? That would prove that there was no advantage to being "first come", first served.

In a letter dated May 28, 1968, to a third party (Ex. 60), Grace Clement stated:

> As far as Waddles are concerned they had a strict rent deal & they knew it, but when they heard that others, who came on after them were being allowed to buy the refused to pay their rent, saying they were paid up.

In her testimony, Grace Clement emphasized that the Waddles occupied the land under a rental agreement; that they (the Klinkes) put in

the driveway or access road and did the necessary clearing of the land; and that they (the Klinkes) paid for the installation of the water and sewage systems by Waddle in that they waived his rental payments for a period of 15 months (S-Tr. 129-131).

Douglas Waddle testified that he moved on the land in July of 1963 (F-Tr. 133); that he had a verbal agreement with Klinke that he would sell the land to them when he got title for $350 per lot (F-Tr. 133, D-Tr. 117); that Klinke was under a firm obligation to sell him the two lots as soon as Klinke obtained title (D-Tr. 117); that shortly after he moved on the land Klinke brought around a rental contract (Ex. 24) and he believes that he signed the contract (F-Tr. 133, 135); that he understood that Klinke wanted the rental contract to protect himself and to assist him in obtaining title to the land (F-Tr. 134, D-Tr. 119); that under his agreement with Klinke, the rental payments were to be applied to the purchase price of the two lots (F-Tr. 138, D-Tr. 119); that he cleared the land, put the access road or driveway in, and installed a water and a sewer system (F-Tr. 142, 143, D-Tr. 117, 118); that he received fifteen months free rent under the rental contract for putting in the water and sewer systems (F-Tr. 142, D-Tr. 118, 119); that after paying $1050, he stopped paying because he figured he had paid for the two lots and an additional area that Grace Clement had agreed to sell to him and George Vey (F-Tr. 139, 140); and that his daughter and son-in-law are living on the lots at the present time (F-Tr. 146).

In view of all of the evidence in this proceeding, I am inclined to discount the testimony of Grace Clement and accept the testimony of Douglas Waddle. I conclude that the land occupied by the Waddles was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department.

SIMS

James Sims and Mary Grace Sims produced a contract that was executed on September 8, 1967, with Grace Clement (Ex. 9). The contract is designated as a lease. It covers three and one-half acres within the trade and manufacturing site. The contract reads in part:

> THE LESSEES have had possession of the subject premises (the herein described approximate three and one half acre (3 1/2 acre) tract from and after the 1st. day of April, 1965 and the Lessor covenants that the Lessees, paying rents herein reserved and abiding the terms and covenants hereof, shall enjoy peaceful and uninterrupted possession of the subject premises during the term hereof [and that upon completion of the survey, upon which Title is pending, the Lessees will have full purchase rights; priority over any other person or persons, to gain Title to the herein described approximate three and one half acre (3 1/2 acre) tract.]
>
> THE LESSEES have paid rent in the amount of $30.00 monthly from the beginning of the original Lease agreement with Grace Clement, beginning Jan. 1, 1967 and continuing up and until this date of _____, 1967. This present agreement provides for the same monthly rent payment of $30.00 per month [for a period of One Hundred and Sixty three months (163 months) from the date of the original agreement, or Jan. 1, 1967. Upon payment of these One Hundred and Sixty Three months of rent, the DEED to the subject land (the approximate three and one half acre tract) will be presented to the Lessees without

further consideration or payment, provided however, that the Lessees wish to exercise this option. The Lessees are not obligated to exercise purchase rights, if they choose not to. IN THE EVENT that the Lessees do not wish to exercise purchase rights to the herein described approximate three and one half acre tract,] the Lessees have extension rights to re-new this lease, with the same provisions, for a period of at least five (5) additional years from the date of expiration of this contract.

[THE LESSEES may, at any time they wish, pay in a lump sum, of any amount, the purchase price of the subject land, or any portion of the purchase price. It being agreed that the purchase price will be $1400.00 per acre at the completion of survey. Said Survey will be conducted by a licensed surveyor and at the expense of the Lessor.

NOTE: "TITLE AND DEED" mentioned in this agreement are of the same and will be considered proof of sole ownership when conveyed to the Lessees by the Lessor.] (brackets added)

Grace Clement also produced a copy of the contract that she allegedly entered into with the Simses (Ex. 62). This contract is exactly the same as the one produced by the Simses, except that it does not contain the wording that I have shown in brackets in the above quotation. From a comparison of the two documents, it appears that Grace Clement produced a photo copy of a contract that had been clipped, pieced and glued prior to photo copying. 3/

3/ With respect to the first bracketed clause in the above contract that reads -- "and that upon completion of the survey, upon which Title is pending, the Lessees will have full purchase rights . . ." -- Grace Clement testified, when shown the Simses' copy of the contract that:

"I don't understand the completion of survey a doggone bit". (S-Tr. 169)

However, in a letter dated February 7, 1966, to a third party, Grace Clement stated, with respect to another contract, that:

I put "upon completion of survey" in there, which really means when I get Title. (Ex. 59)

James Sims testified that he contacted Grace Clement after Klinke had left the property, and she said that she would sell him a piece of property to live on (F-Tr. 60, 61); that they moved on the property in 1964 with a verbal understanding that they were purchasing the land (F-Tr. 60-63); that they lived in a tent on the land while he built a house (F-Tr. 63); that the house was built out of milled logs and it is 46 feet by 28 feet in size (F-Tr. 63, 64); and that he built a garage, gravelled a driveway, and put in his sewage and water systems (F-Tr. 65, 66, 69).

Grace Sims testified that before they went on the land, she told Grace Clement that "if we couldn't own it there was no sense of us building on it" (F-Tr. 72); and that they paid Grace Clement $100 down, and $30 per month as purchase money for the land (F-Tr. 71, D-Tr. 53).

Grace Clement testified that the Simses were strictly on a rental basis and she could not understand where the wording came from that is in the contract that they produced (S-Tr. 168-170); that she furnished all of the material for their well, their cesspool, their sanitary lines, and a good portion of the building material that went into their house (S-Tr. 15, 22, 123); that she didn't pressure them for a contract because they had been kicked off of some land and "they were pretty spooky about a contract" (S-Tr. 22); and that they did not pay any rent until after they signed the rental contract (S-Tr. 198).

I conclude that the land occupied by the Simses was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing

site within the guidelines set forth in the 1970 decision of the Department. The evidence establishes that the Simses occupied the land under a purchase and sale agreement and not on a rental basis as claimed by Grace Clement.

GATES

Cecil F. Gates and Joanne M. Gates entered into a contract on June 8, 1966, with Grace E. Clement covering, among other things, the rental of two acres within the trade and manufacturing site (Ex. 4). The contract produced by Cecil F. Gates reads in part:

> THE LESSEES MAY HAVE possession of the two acre subject tract, from and after the 1st. day of the signing of this lease and the Lessor covenants that the Lessees, paying rents herein reserved and abiding the terms and covenants hereof, shall enjoy peaceful and uninterrupted possession of the two acre subject tract during the term hereof [and that upon completion of survey, upon which Title is pending, the Lessees will have full purchase rights; priority over any other person or persons, to gain Title to the herein described two acre subject tract.] The term (or life) of this lease shall be a period of Fifteen (15) years from the day and year first hereinabove written, [unless the Lessee does exercise his purchase option rights, which, as stated in Article #II of "Articles of Lease" will automatically terminate this lease.]
>
> * * *
>
> [THE LESSOR GUARANTEES to offer Title to the Lessee prior to the expiration date of this lease. At the time Title is offered, the Lessee is privileged to either pay cash for the two acre subject tract, or enter into an agreement with the Lessor, separate and apart from this lease, whereas, monthly payments in an amount, so as not to put the Lessee in a financial depression and at a rate of interest not to exceed 6% simple interest, will be acceptable by the Lessor until the full purchase price of

> Fourteen Hundred dollars ($1400.00), less the total aforementioned unused electric power bill (Article # 6 of "Articles of Lease") is paid. At the time such full payment has been made, the Lessor will present the Lessee with a clear and free Title to the two acre subject tract, with Title Insurance included. The presentation of said Title to the Lessee will cause the expiration of this lease and cancel all the provisions and articles herein, with this exception: Should the Lessor be in a position to offer Title to the Lessee before the Lessee has become entitled to full credit deductions pertaining to the afore-mentioned unused (but paid) monthly electric power bill (Article # 6 of "Articles of Lease"), the Lessor will automatically credit the Lessee with the entire amount of deduction, Three Hundred and Sixty dollars ($360.00).] (brackets added)

On April 2, 1968, Grace Clement submitted a photo copy of the alleged contract with the Gateses to the Director, Bureau of Land Management, in connection with her appeal from the Land Office decision of February 8, 1968 (Ex. 61). This contract is the same as the one produced by the Gateses, except that it does not contain the wording that I have shown in brackets in the above quotation, or other wording relating to the purchase of the land by the Gateses. It seems obvious from a comparison of the two contracts that Grace Clement submitted a photo copy of a contract that had been clipped, pieced, glued, and retyped prior to photo copying.

Cecil F. Gates testified that he has the following improvements on the property: a 10 by 55 foot trailer, a 12 by 24 foot attached "wanigan" -- "both on a pretty permanent foundation", a 20 by 36 foot garage, a water system, a sewer system and a 450 foot circular driveway (F-Tr. 21, 22); that all of the improvements were placed on the property at his own expense (F-Tr. 23); that he received a credit on his rent for the improvements,

and at a rental of $10 per month he figured he had about ten years free rent (F-Tr. 24, 27); that he had a firm commitment from Grace Clement that he could purchase the property (D-Tr. 78); and that he would not have moved onto the ground and made the improvements if he didn't expect to obtain title to the property (F-Tr. 31, D-Tr. 78).

Grace E. Clement testified that Gates occupied the property only on a rental basis and that by receiving credit on his rent for the improvements he made, she was actually paying for the improvements (S-Tr. 18); and that she could not hope to explain the difference between the contract Gates produced and the one she submitted (S-Tr. 178).

I conclude that the land occupied by the Gateses was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department. I cannot accept the assertions of Grace Clement that the Gateses occupied the land on a rental basis as part of a trailer court operation.

TAYLOR

Grace E. Clement testified that William M. and Mildred Taylor moved onto lots 5 and 6 in July of 1963 (S-Tr. 66); that they occupied the land under a rental contract (S-Tr. 66); that they (the Klinkes) put in the access road or driveway, did the necessary clearing of the land, and installed sanitary facilities and a water system (S-Tr. 69, 113); that the Taylors paid three or four months' rent and then all of a sudden they sold their buildings and moved away (S-Tr. 66, 67); and that other people moved in and never paid a dime in rent (S-Tr. 67).

Grace E. Clement produced a rental contract allegedly executed by the Klinkes and Marvin Taylor on July 10, 1963 (Ex. 72). The signature of Marvin Taylor on this document does not appear to be the same as the signature of William M. Taylor on a notarized document that was received in evidence (Ex. 32).

Carl H. Larson testified that he purchased the lots, the house trailer and the improvements on the lots from Mr. and Mrs. Taylor in 1968 (F-Tr. 172, Ex. 32); that he moved on the land in April of 1968 (F-Tr. 171); that he made payments to Taylor until the first part of 1970, and then stopped upon the advice of a lawyer and others (F-Tr. 174, 175); and that he paid about $4,000 to the Taylors on the total purchase price of $4,500 (F-Tr. 175).

Mr. Larson produced a letter dated June 22, 1968, that he received from Mrs. Taylor (Ex. 33). The letter states:

> Our agreement to buy was with Mr. Klinkie. It was verbal. Gracie agreed to it too and said she would give the same agreement to whoever bought the place. The agreement was to pay $350.00 each lot. Making total of $700.00. We paid them $150.00 and were to pay the rest when we received the title.

In view of all of the evidence in this proceeding, I am inclined to discount the testimony of Grace Clement and accept the above statement of Mrs. Taylor. I conclude that the land occupied by the Taylors was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department.

GUARD

Warren Guard testified that he made a deal with Klinke in 1961 to purchase some land (D-Tr. 172); that he paid Klinke approximately $350 and Klinke said "you don't have to give me anything else, that's all" -- "when the time comes you can get the title" (D-Tr. 172, 175); that Klinke did a little land clearing and dug a hole for a cesspool -- "it took him about an hour" (D-Tr. 172); that he (Guard) constructed the cesspool and put in a water system (D-Tr. 172, 174); that he moved onto the land in August of 1961, and built a "wanigan" for his trailer (D-Tr. 176, 184); that he stayed there about 15 or 16 months, and then he moved to Fairbanks (D-Tr. 177, 185); that in 1965 he sold the trailer that he had left on the lot, and when he and the purchaser went down to get it they found that the wheels were off and so he had to refund the purchase money (D-Tr. 179, 180); and that he still owns the trailer (D-Tr. 183). No evidence was presented as to whether he continued to assert any ownership interest in the two lots after leaving the land in the early 1960's.

Grace Clement did not testify other than indirectly concerning the original arrangements with Guard; however, she did indicate that he occupied the land under a rental deal and that they (the Klinkes) put in the necessary improvements. She did testify that Guard allegedly did something bad and they wanted him off the property, and to accomplish this they refunded every dime of rent that he had paid (S-Tr. 75); that after about two years from the time he left he still hadn't moved his trailer so she made a deal and bought it from him (S-Tr. 76); that she

rented the trailer, the land and the facilities for several years to several different people (S-Tr. 74); that during this period she spent a lot of time working on the well, the cesspool and other facilities (S-Tr. 74); and that she later sold the trailer to George Vey (S-Tr. 73).

The testimony of other witnesses confirms the fact that from sometime in 1965 to sometime in 1969, Grace Clement rented the trailer, the land and the facilities on the land to several different tenants and that she spent a good deal of time in maintenance work on the water and sewage systems (F-Tr. 167-168, D-Tr. 109-111, 152-154).

George Vey testified that he purchased the trailer from Grace Clement in 1969 and that he has been renting the trailer (and presumably the land and the facilities on the land) to others since that time (F-Tr. 167, D-Tr. 130).

I conclude that the arrangements with respect to this particular land could, if everything else was proper, constitute the occupancy of the land for the purposes of trade, manufacture or other productive industry, by Klinke and/or Clement from at least 1965 until the time of the sale of the trailer to George Vey.

CHASE, HAWKINS AND McMULLEN

All of the occupants of the land within the trade and manufacturing site that have been previously mentioned, with the exception of Gates and Sims, resided on land that abuts the Nenana-Healy Highway (S-Tr. 215, Ex. 3). Gates and Sims reside on land that is back from the highway and

that lies along an access road from the highway to a homestead held by the Klinkes (Ex. 3). Chase, Hawkins and McMullen also allegedly occupied land along this access road.

Grace E. Clement testified that they had a rental contract with W. D. Chase that was signed in March of 1964, that covered the rental of approximately 3.5 acres designated as lots 91 through 100 (S-Tr. 46, Ex. 61, Ex. C); that they (the Klinkes) constructed and gravelled a driveway from the access road to service the area, and installed water and sewer systems for the area (S-Tr. 47, 88, 214); that Chase moved onto the land in the summer of 1964, and was there off and on until the fall of 1967 (S-Tr. 46, 47); that Chase used the land as kind of a vacation place -- he would be there for several weeks and then leave (S-Tr. 199); that he would bring in a tent or a little travel trailer to live in (S-Tr. 199); that he regularly paid his rent of $30 per month (S-Tr. 201); and that she has not rented the place to anyone since Chase left in 1967 (S-Tr. 49). The land allegedly occupied by Chase adjoins the land occupied by the Gateses and is immediately east of the Gateses' land (Ex. C).

Grace E. Clement testified that she had a rental contract with Carl (Tex) Hawkins that was signed in April of 1965, that covered the rental of approximately two acres designated as lots 120 through 125 (S-Tr. 56-58, Ex. 61); that they (the Klinkes) constructed and gravelled a driveway from the access road to service this area, provided a turn-around area, and installed water and sanitation systems (S-Tr. 62, 93, 212, 214); that Hawkins moved a little travel trailer onto the land and

stayed there off and on for about a year or so (S-Tr. 208, 209); and that he paid his rent of $30 per month on a regular basis until he left in the fall of 1967 (S-Tr. 209). No testimony was presented as to whether the lots were occupied after Hawkins left the land. The land allegedly occupied by Hawkins adjoins the land allegedly occupied by Chase, and is immediately east of the Chase lots, and just down the access road from the Gateses' lots (Ex. C).

Grace E. Clement testified that she had a rental contract with Daniel L. McMullen, her youngest son (S-Tr. 91), that was signed in April of 1966, that covered lots 50 through 55, and 62 through 67 (S-Tr. 53, Ex. 61); that she constructed and gravelled a driveway and a turn-around area, and installed the water and sewer systems (S-Tr. 50, 214); that McMullen moved on the land about April of 1966, and at least for part of the time lived in a tent (S-Tr. 202, 204); that he resided on the land continuously (in an undisclosed type of abode) until sometime in 1968 (S-Tr. 50, 205); that he paid his rental of $30 per month on a regular basis (S-Tr. 203, 204); and that no one has occupied the site since he moved off of the land (S-Tr. 50). The land allegedly occupied by McMullen adjoins the land occupied by the Gateses, and also apparently the land occupied by the Simses (Ex. C). The land lies west of the Gateses and east of the Simses (Ex. C).

Allen R. Cronk, a realty specialist with the Bureau of Land Management in Fairbanks, testified that he examined the areas allegedly occupied by Chase, Hawkins and McMullen in September of 1971 (D-Tr. 71);

and that he thoroughly covered the areas and found no improvements of any kind (D-Tr. 27-30).

James Sims testified that he was not aware that anyone other than he and Gates lived or even vacationed in the area (D-Tr. 36, 37); that he is not aware of any improvements in the area other than his and Gates' improvements (D-Tr. 36, 37); and that McMullen lived with his mother on the homestead (D-Tr. 37).

Cecil Gates testified that he is familiar with the area and does not know of any improvements in the areas of the alleged occupancy of Chase, Hawkins and McMullen (D-Tr. 70, 72); and that if anyone had lived on the land he would have known it, and as far as he is concerned no one ever occupied the land (D-Tr. 70).

Other occupants of the trade and manufacturing cite corroborated the testimony of Sims and Gates with respect to the occupancy of the Land by Chase, Hawkins and McMullen (F-Tr. 57, D-Tr. 56, 57, 61, 103, 115).

I conclude that the land allegedly occupied by Chase, Hawkins and McMullen was not used by Klinke and/or Clement as part of a bona fide trade and manufacturing site within the guidelines set forth in the 1970 decision of the Department. Again I am rejecting the testimony presented by Grace Clement and accepting the testimony offered by other witnesses.

CONCLUSION

With the possible exception of the land originally occupied by Warren Guard, I conclude that Klinke and/or Clement used the 55 acres remaining within the trade and manufacturing site "as the stock in trade of

a business operation". The land was not used for the purposes of trade, manufacture or other productive industry within the meaning of the trade and manufacturing site statute.

Insofar as the Guard property is concerned, I do not believe that the use of this one tract of land (covering 115 feet by 200 feet) by Klinke and/or Clement constituted a sufficient qualifying use within the purview of the statute to authorize the issuance of a patent for this one isolated tract of land.

The application to purchase is rejected in its entirety.

Robert W. Mesch
Hearing Examiner

Dated April 20, 1972.